

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 17, 19-23 and 25-28 and 36-37 are rejected under 35 U.S.C. 102 (b) or 103 (a) over the patent to Johnsson.

Claim 29 is rejected under 35 U.S.C. 102 (b) or 103 (a) over the patent to Cohen.

Claim 30 is rejected under 35 U.S.C. 102 (b) or 103 (a) over the patent to Sirany.

Claim 31 is rejected under 35 U.S.C. 102 (b) or 103 (a) over the patent to Nobile.

Claim 32 is rejected under 35 U.S.C. 102(b) or 103(a) over the patent to Massey.

Claim 33 is rejected under 35 U.S.C. 102 (b) or 103 (a) over the patent to Johnsson.

Claim 34 is rejected under 35 U.S.C. 102 (b) or 103 (a) over the patent to John, et al.

Also, the claims are rejected under 35 U.S.C. 112.

In connection with the Examiner's rejection of the claims under 35 U.S.C. 112 since in the Examiner's opinion they are not supported by the written description, it is respectfully submitted that it is clearly stated in the original description how the medications are produced, how the methods are used, etc. An active medicinal substance is made from an initial material, which can be any material for a corresponding medication, and it is believed therefore that no additional explanations are needed. A potentiated medicinal substance produced by a homeopathic method is also believed to be clear, because the homeopathic methods of producing medicines are known. Homeopathic methods of producing a homeopathic medicine is a method of multiple dilution in a special way which is well known in the medical nutrition and medical field, and it produces a potentiated medicinal substance.

The corresponding terms mentioned on page 3 of the Office Action are also well known, and if necessary applicants will submit corresponding references identifying the terms.

As for the indefiniteness in claims 35-37, with respect what is being treated it is believed unnecessary to identify what is being treated. Any illness which has to be treated with a corresponding medication, can be treated with the medications prepared in accordance with the methods of claims 35-37. The examples are disclosed in the specification. Claim 35 defines a method of treatment in which an active medicinal substance and a potentiated medicinal substance are used, while claim 36 defines that they are combined first and then are introduced as a single medication into an organism, while claim 36 defines that they are introduced separately into organism and then are combined inside the organism. It is therefore believed that the Examiner's grounds for the rejection of the claims under 35 U.S.C. 112 should be considered as no longer tenable and should be withdrawn.

Turning now to the Examiner's grounds for the rejection of the claims over the art, it is believed that the new features of the present invention as defined in the claims, in particular in a new method of making a medication, a new medication, and a new method of treatment with a medication all have the same new, unobvious and patentable features, namely providing an active medicinal substance in a therapeutic dose, providing a potentiated medicinal substance produced by a homeopathic method from the same initial material, and combining them to be used jointly, so as to produce a medication and to treat with a medication.

The references applied by the Examiner has been carefully considered, namely the patents to Johnson, Cohen, Sirany, Nobile, Masse, John. These references do not teach the above mentioned new features of the present invention. The active substance produced from an initial material and a potentiated substance produced by a homeopathic method from the same initial material are totally different substances, they have different properties, they act in a different way, and when combined, they produce a highly efficient medication with completely new properties that has never been known before. This is not disclosed in any of the references and can not be derived from them as a matter of obviousness.

As for the anticipation rejection of the claims based on the references, it is believed to be advisable to cite the decision in re Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, the references do not contain each and every element of the present invention as defined in the above listed claims.

As for obviousness rejection, there are no hints or suggestions for the new features of the present invention as defined in the above listed claims and therefore these claims can not be considered as obvious from the references. In order to arrive at the present invention the references must be fundamentally modified by including into them the new features invention. However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has also been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in re Randol and Redford (165 USPQ 586) that


Prior patents are references only for what they clearly disclose or suggest. It is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Therefore both types of rejections, namely the anticipation rejection and the obviousness rejection should be considered as no longer tenable and should be withdrawn.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-243-3818).

Respectfully submitted,


Ilya Zborovsky
Agent for Applicant
Reg. No. 28563

*Extension Request
Please extend the term by 2 months
and charge the fee to acc. No 26-0085*

Jz